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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th October 1954

S.R.O. 3242.—Whereas the election of Shri Hari Chand, as a member of the Legislative Assembly of the State of Punjab, from the Anandpur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohan Lal, son of Shri Saran Dass, Village and P.O. Khad, Thana and Tehsil Una, District Hoshiarpur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JULLUNDUR

ELECTION PETITION No. 184 of 1952

Mohan Lal son of Saran Dass, V. and P.O. Khad, Thana and Tehsil Una, District Hoshiarpur (Punjab)—*Petitioner.*

Versus

1. Rao Hari Chand son of Shri Amar Chand, Caste Rajput, V. and P.O. Bhalan, Tehsil Una, District Hoshiarpur;
2. Sardar Sarwan Singh son of S. Harnam Singh, V. Mangewal, P.O. Anandpur, Tehsil Una, District Hoshiarpur;
3. S. Sarwan Singh son of S. Ganda Singh, V. Saidpur, P.O. Jhaj, Tehsil Una, District Hoshiarpur;
4. Ch. Parmeshri Dass son of Ch. Chuhru Ram, V. Saini Majra, P.O. Noorpur Bedi, Tehsil Una, District Hoshiarpur;
5. Shri Banarsi Dass son of Shri Dina Nath, V. and P.O. Takhatgarh, Tehsil Una, District Hoshiarpur, at present V. Sowani, P.O. Nehla, Tehsil Fateh Bad, District Hissar;
6. Shri Lachhman Dass son of Hari Ram, V. and P.O. Nurpur Bedi, Tehsil Una, District Hoshiarpur;
7. Shri Bikram Chand son of Rai Jagdish Singh, V. Balpur, P.O. Noorpur Bedi, Tehsil Una, District Hoshiarpur—*Respondents.*

Petition for declaring void the election of Shri Hari Chand, Respondent No. 1, as a member of the Punjab Legislative Assembly from Anandpur Constituency in the Punjab State. (Under section 100, Representation of People Act, 1951).

CORUM:

Shamsher Bahadur, Barrister-at-Law, *Chairman*.

Ch. Chhaju Ram, B.A. (Hons.), LL.B., P.C.S., *Member*.

S. Mohindara Singh Pannun, M.A., LL.M., D.C.P., *Member*.

JUDGMENT

(PER SHAMSHER BAHADUR, *Chairman*)

The election of Rao Hari Chand, who has been returned to the Punjab Legislative Assembly from Anandpur Constituency by securing 10,896 votes has been challenged by the petitioner Shri Mohan Lal, one of the rival candidates, who secured 10,085 votes. The petitioner impleaded six other persons as respondents besides Rao Hari Chand, but they have not come forward to contest this petition. By his application dated 30th July, 1952, the petitioner sought to implead three more persons as respondents, Shri Bhagat Ram, Shri Mohindar Singh and S. Shiv Singh. The first two of these were validly nominated candidates for the election in dispute and had withdrawn their candidatures before the appointed date. By our order dated 11th October, 1952, we held that the Tribunal had no power to implead any more respondents at that stage. It has also been held by this Tribunal in Election Petition of Prem Nath *versus* Ram Kishan (1) that though it is imperative for the petitioner to implead all the duly nominated candidates as respondents, the failure to do so does not necessarily entail a dismissal of the petition. We accordingly proceeded to a trial of this petition on merits.

The principal grounds on which the election has been challenged are:—

- (a) Unauthorised publication of posters on behalf of Dr. Ambedkar embodying an appeal to the Harijan community to vote for the contesting respondent Rao Hari Chand.
- (b) The assistance given by the lambardars of the *Ilaqa* Sodhi Harbhajan Singh and S. Shiv Singh to the first respondent.
- (c) Employment of village headmen as polling agents of the first respondent.
- (d) Contravention of the provisions relating to the election expenses by employment of more clerks than are permissible under the Rules by Respondent No. 1.

The allegations in the petition were traversed by the respondent and the following issues on merits were framed by the Tribunal on 27th October, 1952:—

1. Is the election of the returned candidate liable to be declared void because of the exercise of undue influence on the voters of the Constituency for the reasons stated in paragraphs V-A(1) to V-A(4) and XIII of the Petition read with lists 1 to 4 and 14 of the annexure?
2. Is the election of the returned candidate liable to be declared void for the acts of bribery detailed in paragraphs V-B(1) to V-B(4) of the petition read with lists 5 to 8 of the annexure?
3. Can the election of the returned candidate be declared void because of the corrupt and illegal practices enumerated in the petition at paragraphs V-C, VI, VII and IX and the lists 9, 10, 11, 13 and 14 of the annexure?
4. Were the applications for the appointment of polling agents for the petitioner illegally refused by the Returning Officer? If so, what is its effect?

The second issue in substance and the fourth one in its entirety were not pressed by the petitioner's counsel and we need to discuss only the first and third issues in detail in considering the contentions which have been raised by the parties. The point which we have to take into discussion of issue No. 1 relates to the posters issued in the name of Dr. Ambedkar making an appeal to the *Harijans* to cast their votes in favour of the first respondent who was a nominee of the Forward Block. There is abundant evidence on the record to show that some posters were issued by the leader of the depressed classes. The copies of these posters are Exts. P.1 and P.2. There is no evidence in denial to show that such posters were not widely circulated in the constituency. All that has been contended is that the respondent had no concern with them whatsoever. It was for the petitioner to show that the posters were fictitious and the name of Dr. Ambedkar was used without his authority. The Kernel of the complaint

made by the petitioner is that these posters were printed at the instance of the respondent to prejudice the voters of the depressed classes against the petitioner, who contested the election as a nominee of the Congress Party. Some attempt has been made to prove that the payment for publication of these posters was made by or on behalf of the first respondent. Two sets of vouchers have been put on record relating to Amar Printing Press where the posters printed; one set of these vouchers was submitted with the return of election expenses by Respondent No. 1 and the other has been produced by the proprietor of the Press, Shri Bal Krishan, P.W. 8. The amount actually charged in the vouchers P.W. 6/6 and P.W. 6/7 is mentioned as Rs. 17-12-0 for each issue, whereas the vouchers of the same date produced by Shri Bal Krishan show that the amount received from the respondent was Rs. 15 in each case. This discrepancy has not been reconciled and there is no material on the record for us to hold that the publication charges of the posters were paid by the first respondent.

Assuming for a moment that the first respondent caused payment to be made of the publication charges of the posters, no proof has been adduced to show that they were printed and circulated without the authority of Dr. Ambedkar. The petitioner was given two or three opportunities to produce Dr. Ambedkar in evidence and Mr. Mehra, Advocate, was appointed to take down his statement on open commission in Delhi. Ultimately the petitioner gave up Dr. Ambedkar, and his evidence was not recorded. Dr. Ambedkar is the only person who could have stated whether or not the posters Exhibits P. 1 and P. 2 were issued under his authority. In the absence of this vital evidence, it must be held that the petitioner has failed to make good the case which he set himself out to establish and the issue must be decided against him.

It may be observed that all the other controversial points in Issue No. 1 were not pressed in arguments and require no further discussion.

Issue No. 3.—The first corrupt practice which has to be enquired into is covered by paragraph V(c) of the petition, and list 9 of the annexure. Although 19 village headmen were mentioned in the list of persons, who rendered assistance to the first respondent, evidence has been led only with regard to Sodhi Harbhajan Singh and S. Shiv Singh, lambardar of Bela Ram Garh. It has been brought out in evidence that Sodhi Harbhajan Singh, a lambardar of Lodhipur and a spiritual head of the Sikh community went about the constituency in his jeep to canvass support for the first respondent and also acted as his polling agent at Anandpur Polling Station. Dr. Indar Singh, P.W. 7, Medical Practitioner of Anandpur, Bishan Datt, P.W. 20, Secretary of the Congress Committee, Jhaj, S. Sarwan Singh, respondent (P.W. 21), a candidate for the seat, Shri Bhagat Ram, P.W. 22, General Secretary of the Congress Committee of Anandpur Police Station and Sarwan Singh, P.W. 23, a Communist candidate in the election have deposed on behalf of the petitioner that they saw Sodhi Harbhajan Singh going about in his jeep enlisting the support of voters for the first respondent. It has not been denied by the respondent that Sodhi Harbhajan Singh acted as his polling agent. The other assistance rendered by Sodhi Harbhajan Singh to which the petitioner's witnesses have alluded has been controverted by the respondent's evidence. It has further been pointed out that Teja Singh, P.W. 18, who appeared on behalf of the petitioner himself admitted that Sodhi Harbhajan Singh never himself canvassed for the first respondent, though his sarbrah lambardar Amar Singh did approach the witness for his vote. It has been very strongly urged by the learned counsel for the petitioner Mr. Tek Chand that the part taken by Sodhi Harbhajan Singh as the polling agent of the first respondent strongly suggests his active participation and assistance in the election campaign of Rao Hari Chand. We do not feel inclined to accept to the fullest extent the evidence of Dr. Indar Singh, whose antecedents are anything but satisfactory, or even of Bishan Datt, who as Secretary of the Congress Committee, Jhaj, was naturally disposed to give evidence in favour of the petitioner and for the same reason of Bhagat Ram, P.W. 22, but the evidence of Sarwan Singh, P.W. 23, does not appear to suffer from any great blemish. As a Communist candidate, S. Sarwan Singh toured the constituency and had many occasions to see Sodhi Harbhajan Singh assisting the cause of the first respondent by personal appeal to voters. It is not sufficient to discredit the evidence of Sarwan Singh to say that he has been actuated to give this evidence because of the prevailing agitation of the tenants in this area against the landlords, nor can any importance be attached to enmity of this witness with Hakim Pritam Singh who was a supporter of the first respondent.

As regards lambardar Shiv Singh, the evidence is wholly insufficient to come to any definite conclusion about his participation in the election campaign of the first respondent. Even taking the case of the petitioner at its best, the speech which has been attributed to lambardar Shiv Singh by A.S.I. Shri Rajpal Singh, who incidentally referred to Shiv Singh as a Jathedar and thus created a confusion which has been fully exploited by the respondent, was delivered by him at

Anandpur on 5th December, 1951. We have gone through the entire speech with the assistance of counsel, and we do not find a single word in it which might even by implication suggest that it was made in support of the candidature of the first respondent. Indeed S. Shiv Singh delivered a long harangue which did not specifically refer to election of any particular person. It was a speech which was mainly directed against the Communist Candidate and all that can be said is that it was made in a meeting which had been convened on behalf of the Forward Block, whose nominee the first respondent was. This is far from saying that lambardar Shiv Singh rendered assistance in the election prospects of Rao Hari Chand. Shiv Singh, R.W. 17, has made a categorical denial of the delivery of the speech attributed to him. As we have already indicated there is some confusion created about the identity of S. Shiv Singh, who is said to have delivered the speech. Whether Shiv Singh, R.W. 17, was the person who delivered the speech or not is a question which is wholly unnecessary to determine, as in our view the speech itself was innocuous and could not conceivably afford any assistance to the election prospects of the first respondent.

In parenthesis, it may also be observed that the petitioner made a prayer in his application, dated 30th July, 1952, to which reference has already been made that S. Shiv Singh of Bela Ramgarh be impleaded as a respondent, as he was a duly nominated candidate. We feel that the failure of the petitioner to have impleaded Shiv Singh in time is a defect which is fatal to the allegation which has been made against him, and indeed in the petition itself it was stated that no allegation "had been made against S. Shiv Singh, nor any relief has been sought against him". It would thus be wholly unjustifiable to inquire into the allegations which have been made against S. Shiv Singh by witnesses of the petitioner. We are thus left only with such assistance as was rendered by Sodhi Harbhajan Singh, who is admittedly a lambardar of the *Ilaga*. The position taken up by Sodhi Harbhajan Singh that he is not carrying out the duties of a *lambardar* and has in fact appointed a *Sarbrah* to perform such work does not at all help the respondent. A *lambardar*, whether he acts himself or through his *sarbrah* remains a village headman and under section 123(8) of the Representation of People Act any attempt to obtain or procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from such a person amounts to a major corrupt practice and must inevitably lead to a declaration that the election of such candidate is void. That Sodhi Harbhajan Singh was a polling agent of the first respondent is an indisputable fact. In our opinion this by itself is sufficient to show that assistance was rendered by him in furtherance of the prospects of the election of the first respondent. It is pertinent to emphasize that a polling agent is appointed at the instance of a candidate primarily to ensure that only the persons who are entitled to vote are allowed to do so inside the polling booth or station. The function of a polling agent is generally to look after the interests of the candidate during the poll. The duties of a polling agent have been summarised with great care by G. S. L. Srivastava in his book *Indian Elections and Election Petitions*, 1952 edition at page 77. This passage may be reproduced in detail:

"Every candidate will find it necessary to appoint polling agents. *The function of a polling agent will generally be to look after the interests of a candidate during the poll.* He has to see that the voters for his candidate are allowed to vote properly and are not misdirected by the polling agents of other candidates into voting for others or voting not in accordance with the rules so as to make the ballot paper invalid. He has sometimes to identify voters. He has to be vigilant so as to detect cases of personation by others. He is not only to see that persons do not come and vote for other candidates in the names of other voters but also that no voter personating for another casts any vote for the candidate whose polling agent he is, because if such voting is allowed to take place it would create the risk of his candidate's election being declared void on an election petition. A polling agent has to see that the voters for his candidate are allowed due entry into the polling booth and that they are issued ballot paper in time. He is to guide them to the ballot boxes. It is therefore obvious that the polling agents to be selected should be shrewd persons and for any particular polling station such persons should be selected, as far as possible, who are personally acquainted with the electors."

In our opinion, such duties as are cast on the polling agent by statute clearly indicate that he has to act as a partisan. It is to be observed that a person so appointed is an "*agent*" of the candidate, with all the implications that attach to a person possessing this legal status. An agent in law is bound to promote

the interests of his principal in the discharge of his duties and in the nature of things he must render assistance to his principal in whose cause he purports to act. It is true that a polling agent cannot do any canvassing work within 100 yards of the polling station, but there is a variety of ways in which he can make himself useful to the candidate for whom he is acting short of active canvassing. A polling agent who takes his work seriously and vigilantly is bound to render assistance to his principal in consequence of such discharge of his duties.

Agency has acquired a very much wider import in election law than the meaning which is ordinarily attached to this expression in legal parlance. A detailed discussion of this subject is to be found in Chapter VIII of Pandit Nank Chand's Law of Elections and Election Petitions, 1961 edition starting from page 68. A polling agent being an agent of the candidate, it seems axiomatic to say that he is a person who is assisting his principal in his election prospects. Whether he is able to detect any case of personation or not, a polling agent is still acting in the interests of his principal if his vigilance acts as a deterrent for intending personators. From whatever aspect we view this matter, the rôle of a polling agent is that of an assister of his principal and nothing else, the degree of his assistance being irrelevant for our consideration.

(1) We are unable to subscribe to the view adopted by the Jubbalpur Tribunal, (2) that "the polling agent is a person more to assist in the work of polling than to work for the candidate in the polling station". It appears to us that the position adopted by the Pepsu Tribunals, (3) in this matter is in consonance with the intention of the Parliament which enacted section 123 of the Representation of People Act.

A reference may also be made to the position of polling agent in England. In Schofield's Law of Parliamentary Elections, 1950 edition, it is mentioned at page 231 that a polling agent "need not be an elector, but he must not be any officer or clerk appointed under the Parliamentary Election Rules or any partner or clerk of any such person". Section 86 of the Representation of the People Act, 1949 of United Kingdom lays down under the caption "*Officials of the election not to act for the candidate*" that if any Returning Officer at a Parliamentary or local Government elections or any Officer or Clerk appointed under the Parliamentary or Local Election Rules, or any partner or Clerk of any such person acts as an agent of a candidate in the conduct or management of the election, he shall be guilty of a misdemeanour.

The discussion shows clearly that the Legislatures both in India and England look with extreme disfavour at active participation of Government officials in election work for party candidates. It is a salutary rule which the courts are bound to enforce. The employment of a village headman as a polling agent is a clear indication to the electorate that such an agent is assisting the cause of the candidate's election and this is exactly what the Legislature has intended to prevent. A large number of authorities have been cited at the bar both in favour of the proposition and against, that a polling agent is a person who assists in the furtherance of the prospects of the candidate. It is our considered view that a polling agent necessarily assists in the election of his principal. We, therefore, hold that the participation of Sodhi Harbhajan Singh, a village headman as a polling agent for the first respondent is sufficient for a declaration that the election of Rao Hari Chand is void.

In view of this finding it is unnecessary to discuss the other allegations which are covered by Issue No. 3, viz., employment of an extra clerk by the first respondent, and the filing of false return of election expenses. It is true that both Ram Rakha and Narotam Singh are shown to have been employed as clerks by the first respondent in his return of election expenses, but it appears from the evidence that Narotam Singh was the only whole-time regular clerk. Ram Rakha has been in the employment of the first respondent for a long time before the commencement of the election and such casual assistance which he may have given is insufficient for us to hold that he was in the regular employment of the first respondent in his election work. We agree with the position taken by the respondent that Ram Rakha's work was in the nature of a messenger so far as his election duties were concerned. As such, there was no violation of the Rules pertaining to this subject. In any case there was no corrupt motive and in its absence there can be no corrupt practice. We see no substance in the allegation of the petitioner that the respondent's return of election expenses was false to his knowledge inasmuch as certain items of expenditure have been omitted therefrom. Stress has been laid on the omission of such items as stationery and depreciation of motor cars, etc. These items are not capable of ascertainment and are wholly vague. In any event they are so insignificant that we do not feel inclined to attach any importance to their omission from the return of Election expenses.

The result of our findings is that Sodhi Harbhajan Singh, Iambardar, was assisting in the election campaign of the first respondent besides acting as his polling agent. As such Rao Hari Chand has committed a major corrupt practice under section 123(8) of the Representation of People Act. We, therefore, declare his election void under section 98 read with section 100(2)(b) of the Representation of People Act. As regards the ensuing disqualification, we may observe that there was a widespread misapprehension on the part of the candidates in the State with regard to the employment of village headman as polling agents, but as we have no discretion in the matter, we direct that the first respondent (Rao Hari Chand) will be disqualified for a period of six years from this date under section 140 of the Representation of the People Act. Taking all the circumstances into consideration including the disqualification imposed on the respondent, we make no order as to costs of this petition.

Announced.

The 30th June, 1953.

(Sd.) SHAMSHER BAHAUR, *Chairman.*

I agree.

The 30th June, 1953.

(Sd.) CHHAJU RAM, *Member.*

I agree.

The 30th June, 1953.

(Sd.) M. S. PANNUN, *Member.*

(1) Before the Election Tribunal, Jullundur, Election Petition No. 232 of 1952, published in Part II, Section 3 in the *Gazette of India Extraordinary* of December 18, 1952, page 1010.

(2) Before the Election Tribunal, Jabbalpur, Election Petition No. 3 of 1952, published in Part II, Section 3 in the *Gazette of India Extraordinary* of 26th February, 1953, page 542.

(3) Before the Election Tribunal, Patiala, Election Petition No. 214 of 1952, published in Part II, Section 3 in the *Gazette of India Extraordinary* of February 5, 1953, page 315.

[No. 19/184/52-Elec.III/11919.]

K. S. RAJAGOPALAN, *Asstt. Secy.*